

Claimant testified that Rick Doughty witnessed his accident. Claimant states he experienced a sharp pain in his back. "It locked, and I was bent over at a degree angle." Claimant went on to testify that he was unable to continue working that day and thereafter was off work about seven (7) days following his injury. Although Rick Doughty testified that

he recalls assisting claimant with unloading an industrial clothes dryer from a trailer along with several other workers, but he states that claimant did not mention being injured, did not walk around with his back bent at an angle and did not miss any work. This latter assertion is supported by the timecard records introduced at that hearing.

Claimant offered into evidence a letter from a Mr. Patrick Herod which corroborates his testimony. Nevertheless, giving due deference to the findings of the Administrative Law Judge who had the opportunity to observe the demeanor and assess the credibility of the witnesses testifying at the preliminary hearing, and considering the record as a whole, the Appeals Board finds that the claimant has not met his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent on the date alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the April 28, 1995 Order of Administrative Law Judge John D. Clark should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Edward L. Parker, Lawton, OK
William L. Townsley III, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director